

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

OCT 21 2003

In re)
)
NPCR, INC d/b/a NEXTEL PARTNERS) CC Docket 96-45
)
Petition for Waiver of Section)
54 313 of the Commission's Rules)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To The Commission

PETITION FOR WAIVER – EXPEDITED TREATMENT REQUESTED

NPCR, Inc d/b/a Nextel Partners (“Nextel Partners”), by its counsel and pursuant to Sections 1.3 and 1.925(b) of the Commission’s Rules, 47 C.F.R. § 1.3 and 47 C.F.R. § 1.925, hereby requests a waiver of Section 54.313 of the Commission’s Rules, 47 C.F.R. § 54.313, which requires state certification of Universal Service Fund (“USF”) High Cost Program support for non-rural carriers. Nextel Partners seeks this waiver for the time period October 1, 2003 through December 31, 2003, and for the non-rural study areas in which Nextel Partners was designated as an eligible telecommunications carrier (“ETC”) by the State of Mississippi on September 29, 2003.¹ The rule waiver is required for Nextel Partners to begin to receive USF High Cost Program subsidies during the fourth quarter of 2003 in those non-rural designated areas.

In support of this Petition for Waiver, the following is respectfully shown:

¹ A list of the areas in Mississippi for which Nextel Partners has been designated an ETC is included in **Exhibit A** hereto.

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I. BACKGROUND

Nextel Partners is a commercial mobile radio service ("CMRS") provider in the State of Mississippi and operates an advanced digital wireless network providing mobile telecommunications services under the "Nextel" brand name. On April 17, 2003, Nextel Partners filed a petition with the Mississippi Public Service Commission ("MPSC") requesting designation as an ETC in certain non-rural BellSouth Mississippi wire centers (hereafter, the "Designated Areas").² In support of its petition, Nextel Partners filed a detailed description of its proposed LifeLine and Link-Up wireless service plans³ and responded to various data requests from the MPSC. On September 29, 2003, the MPSC designated Nextel Partners as an ETC in the Designated Areas in Mississippi.

Under Section 54.313 of the Commission's rules, in order for an ETC to receive USF support for non-rural areas in states that have chosen to exercise jurisdiction, the State must file an annual certification with the Commission and with the Universal Service Administrative Company ("USAC") stating that all federal high-cost support will be used only for the provision, maintenance, and upgrading of facilities and service for which the support is intended. See 47 C.F.R. § 54.313. The annual certification under 54.313, due by October 1, is required to make USF High Cost Program funding available for the first through fourth quarters of the succeeding year.

On September 29, 2003, the same date that the MPSC designated Nextel Partners as an ETC, the MPSC submitted certifications in accordance with 47 C.F.R. § 54.313 to

² The specific BellSouth Mississippi wire centers for which Nextel Partners has been granted ETC status are set forth in **Exhibit A** hereto.

³ *Application of NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier Under 47 C.F.R. §214(e)(2), Amendment to Petition*, Mississippi Public Service Commission, 2003-UA-256 (filed July 17, 2003).

both the Universal Service Administrative Company ("USAC") and the Commission regarding Nextel Partners' use of USF funds⁴ As a result, Nextel Partners is eligible to begin receiving USF support in the first quarter of 2004

There is no mechanism for newly-designated ETCs to receive support for the three-month period following the state's October 1 certification. According to the certification schedule set forth in Section 54.313 of the Rules, the MPSC would have to have filed an annual certification for Nextel Partners no later than April 1, 2003 in order for Nextel Partners to receive USF High Cost funding commencing September 29, 2003, which falls at the end of the third quarter of 2003⁵ The MPSC did not submit the requisite annual certification by April 1, 2003, because Nextel Partners was not yet designated as an ETC As a result, a waiver of Section 54.313 of the Rules is needed to allow Nextel Partners to receive funding for the time period September 29, 2003 through December 31, 2003

II. REQUEST FOR WAIVER

Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, allows the FCC to waive the application of any rules for good cause shown In addition, Section 1.925(b)(3) provides for a waiver where it is shown that,

⁴ Copies of the MPSC's letters to USAC and to the Commission are reproduced as **Exhibit B** hereto

⁵ In addition to providing certification to both the Commission and USAC as to its use of High Cost USF support, Nextel Partners is also required to provide line count information in order to be eligible for support and an additional filing containing a certification of its interstate access support See 47 C.F.R. §§ 54.307(c), 54.802(a), and 54.809(a). Nextel Partners timely filed these additional submissions with the Commission and USAC by the requisite deadlines for the periods covered by this waiver request Nextel Partners also filed its line counts on September 29, 2003 in compliance with the quarterly submissions for high cost model and interstate access support so that Nextel Partners could receive USF support in the first quarter of 2004

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by the application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative⁶

Federal courts hold that the Commission “may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.”⁷

As noted above, strict application of Section 54.313 of the Rules in this instance would create the unintended consequence with respect to Nextel Partners of delaying USF High Cost support until the first quarter of 2004, despite the fact that Nextel Partners will be functioning as an ETC and providing supported services during the third and fourth quarters of 2003. A delay in Nextel Partners’ funding due to a strict application of Section 54.313 of the Rules would be inconsistent with the Commission’s public policy goals of bringing access to advanced mobile telecommunications technologies to all citizens. Indeed, the Commission recently observed that facilitating access to spectrum-based, wireless and mobile communications technologies is “an especially important Commission goal—not just in urban markets but also in rural areas, to enable Americans who travel, reside or conduct business throughout the country to communicate effectively for the benefit of the general public interest.”⁸ USF funding is vital to Nextel

⁶ See 47 C.F.R. § 1.925(b)(3).

⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁸ See *In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, 2000 Biennial Regulatory Review *Spectrum Aggregation Limits for Commercial Mobile Radio Services, Increasing Flexibility to Promote Access*

Partners' ability to carry out its mission as an ETC because it will allow Nextel Partners to pursue the construction and upgrading of its network to better serve customers in the Designated Areas. Nextel Partners should not be unfairly handicapped, stalled or otherwise delayed in pursuing its mission as a designated ETC by the strict application of rules that were never intended to undermine the purpose of an ETC designation. Nextel Partners should not be denied a full quarter of support merely because the timing of its ETC designation, which occurred on September 29, 2003, prevented the earlier filing of the Section 54.313 certification by the July 1, 2003 deadline.

Grant of Nextel Partners' petition for waiver would clearly serve the public interest and is fully consistent with Sections 1.3 and 1.925(b)(3) of the Commission's Rules, as well as the Commission's goal of competitive neutrality in universal service support. The universal service program is intended to promote access to advanced services in areas where telephone subscribership has been historically low. Nextel Partners' universal service program furthers this goal by providing the USF supported services to citizens in the Designated Areas over an advanced digital mobile nationwide network. High Cost Program funding will enable Nextel Partners promptly to begin upgrading and constructing new facilities to provide quality services to Mississippi residents.

The limited waiver that Nextel Partners seeks is fully consistent with and supported by well-established Commission precedent. Indeed, the Commission has

to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation, Notice of Proposed Rulemaking, WT Docket Nos. 02-381, 01-14, 03-202 at ¶ 8 (rel. October 6, 2003).

granted numerous similar waiver requests⁹ In granting such waivers, the Commission has identified an ETC designation date as being a “special circumstance” that warrants a limited waiver to allow a new ETC to file retroactive certifications and line counts so that ETC support can commence¹⁰

Further, in granting a waiver to the State of West Virginia for the late filing of its certification for non-rural ETCs, the Commission reasoned that, “the potential harm that would be suffered by customers [of the carriers] . . . justifies a waiver.”¹¹ In the *West Virginia Waiver Order*, the Commission found that the loss of a quarter of USF funding in similar circumstances would be “egregious ”¹²

Because grant of the requested waiver is fully consistent with the Commission’s rules and precedent and would allow Nextel Partners to better carry out its mission as an ETC in furtherance of the public interest, and because a delay in receipt of funds by Nextel Partners could have the egregious and unintended consequence of unnecessarily delaying implementation of the important goals of USF high cost support, the Commission should act promptly to grant Nextel Partners’ requested waiver.

⁹ See, e.g., *N E Colorado Cellular, Inc , Petition for Waiver of Section 54 314(d) of the Commission’s Rules*; 2003 FCC Lexis 4186, DA 03-2482 (rel July 25, 2003); *Guam Cellular and Paging, Inc , Petition for Waiver of Section 54 314 of the Commission’s Rules and Regulations*, 18 FCC Rcd 7138 at ¶ 7 (2003); *RFB Cellular, Inc , Petition for Waiver of Section 54 314(d) and 54 307(c) of the Commission’s Rules and Regulations*, 17 FCC Rcd 24387 (2002), and *Smith Bagley, Inc Petition for Waiver of Section 54 809(c) of the Commission’s Rules and Regulations*, 16 FCC Rcd 15275 (2001).

¹⁰ See *id*

¹¹ *West Virginia Public Service Commission, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers*, 16 FCC Rcd 5784, 5786 (2001) (“*West Virginia Waiver Order*”)

¹² *Id*

III. REQUEST FOR EXPEDITED ACTION

Action on this waiver request must be expedited in order to ensure that vital USF High Cost support to Nextel Partners can commence as soon as possible. In order to meet its current obligations as an ETC, Nextel Partners must be able to receive, on a timely basis, the support for which it is eligible upon designation as an ETC. Expedited action is critical because Nextel Partners has already been designated as an ETC in the State of Mississippi and would otherwise be required to provide without the benefit of subsidies USF supported services for which other ETCs receive funding. Grant of the requested waiver would minimize economic and competitive damage caused by the delay in receipt of USF support.

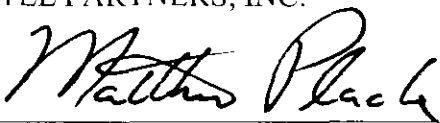
IV. CONCLUSION

Nextel Partners requests that the Commission waive the strict application of Section 54.313 of the Commission's Rules to the extent necessary to treat the MPSC's annual certification of Nextel Partners' use of USF High Cost Program funds as timely filed for purposes of allowing Nextel Partners to begin receiving USF High Cost subsidies as of September 29, 2003.

Wherefore, for good cause shown, Nextel Partners respectfully submits that a waiver of the Commission's Rule as set forth above will serve the public interest

Respectfully submitted,

NEXTEL PARTNERS, INC.

By 

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October 21, 2003

EXHIBIT A

Wire Centers in Mississippi for which
Nextel Partners has been designated an ETC

ATTACHMENT 1

Designated Areas for which Nextel Partners
Is Designated As An ETC

BELLSOUTH CORP BENTMSSU	BELLSOUTH CORP FORSMSMA
BELLSOUTH CORP BGCHMSSU	BELLSOUTH CORP FYTTMSMA
BELLSOUTH CORP BILXMSDI	BELLSOUTH CORP GLPTMSLY
BELLSOUTH CORP BNTNMSSU	BELLSOUTH CORP HDLBMSMA
BELLSOUTH CORP BOTNMSMA	BELLSOUTH CORP HPVLMSSU
BELLSOUTH CORP BRHNMSMA	BELLSOUTH CORP HRLYMSMA
BELLSOUTH CORP BRNDMSES	BELLSOUTH CORP HTBGMSMA
BELLSOUTH CORP BRWDMSMA	BELLSOUTH CORP HZLHMSMA
BELLSOUTH CORP CHNKMSSU	BELLSOUTH CORP KSCSMSMA
BELLSOUTH CORP CLNSMSMA	BELLSOUTH CORP LAKEMSMA
BELLSOUTH CORP CNTNMSMA	BELLSOUTH CORP LARLMSMA
BELLSOUTH CORP COVLMSSU	BELLSOUTH CORP LCDLMSMA
BELLSOUTH CORP CRSPMSMA	BELLSOUTH CORP LXTNMSMA
BELLSOUTH CORP CRTHMSMA	BELLSOUTH CORP MAGEMMSMA
BELLSOUTH CORP CSVLMSSU	BELLSOUTH CORP MIZEMSMA
BELLSOUTH CORP DFFEMSMA	BELLSOUTH CORP MNASMSMA
BELLSOUTH CORP DKLBMSMA	BELLSOUTH CORP MNDNMSMA
BELLSOUTH CORP EDWRMSDS	BELLSOUTH CORP MNTIMMSMA
BELLSOUTH CORP ELVLMSMA	BELLSOUTH CORP MRTNMSMA
BELLSOUTH CORP ENTRMSMA	BELLSOUTH CORP MSPNMSMA
BELLSOUTH CORP FLORMSMA	BELLSOUTH CORP MSTFMSCU

BELLSOUTH CORP MTOLMSMA
BELLSOUTH CORP NWTNMSMA
BELLSOUTH CORP OBDHMSMA
BELLSOUTH CORP PCKNMSMA
BELLSOUTH CORP PCYNMSMA
BELLSOUTH CORP PGSNA'SMA
BELLSOUTH CORP PHLAMMSMA
BELLSOUTH CORP PLHTMSMA
BELLSOUTH CORP PPVLMSMA
BELLSOUTH CORP PRVSMMSMA
BELLSOUTH CORP PSCHMSLT
BELLSOUTH CORP PSCHMSMA
BELLSOUTH CORP QTMNMSMA
BELLSOUTH CORP RCTNMSMA
BELLSOUTH CORP RLFKMSMA
BELLSOUTH CORP RLGHMSMA
BELLSOUTH CORP RYMNMSDS
BELLSOUTH CORP SMRLMSMA
BELLSOUTH CORP SNRYMSMA
BELLSOUTH CORP TMSBMSMA
BELLSOUTH CORP TRRYMSMA
BELLSOUTH CORP TYVLMSMA
BELLSOUTH CORP UNINMSDS

BELLSOUTH CORP UTICMSDS
BELLSOUTH CORP VNCLMSMA
BELLSOUTH CORP WGNSMSMA
BELLSOUTH CORP WNRDMSSU
BELLSOUTH CORP WSSNMSMA
BELLSOUTH CORP WYBOMMSMA
BELLSOUTH CORP YZCYMSMA

EXHIBIT B

Certification Letter Regarding Nextel Partners
Sent by the MPSC to USAC and the Commission

Before the
MISSISSIPPI PUBLIC SERVICE COMMISSION

**APPLICATION OF
NPCR, INC. d/b/a NEXTEL PARTNERS
FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER
UNDER 47 U.S.C § 214(e)(2)**

DOCKET NO. 03-UA-0256

ORDER

COMES NOW the Mississippi Public Service Commission ("Commission") and it appearing to the Commission, for good cause shown and after reviewing the plan of NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners") for utilization for the year 2004 Federal Universal Service Funding ("USF") heretofore submitted to this Commission by Nextel Partners, and this Commission being otherwise sufficiently advised, finds as follows.

I.

On April 17, 2003, Nextel Partners filed its Application for Designation as an Eligible Telecommunications Carrier ("ETC") under Section 47 U.S.C. 214(e)(2). The Commission entered an Order designating Nextel Partners as an ETC on September 29, 2003

II.

On September 29, 2003, Nextel Partners submitted its detailed plan for utilization of the Federal Universal Service Fund for the year 2004 for approval by the Commission. The plan submitted was filed under seal, but generally proposed to maintain and support the existing infrastructure and also expand network services for projected 2004 growth. The Commission finds that Nextel Partner's proposed use of federal universal service

funds for the year 2004 in Mississippi is consistent with the principles of Universal Service as outlined in the Telecommunications Act of 1996 and by the FCC in its Universal Service Order.¹

III

The Commission, after consultation with the Public Utilities Staff, concludes that Nextel Partners' plan for utilization of the Federal Universal Service Fund for the year 2004 is consistent with the Telecommunications Act of 1996 and the pertinent FCC orders

IT IS THEREFORE, ORDERED:

1. The Commission hereby certifies that Nextel Partners' plan to utilize Federal Universal Service High Cost Support Funds in Mississippi as contained in its plan submitted to the Commission on September 29, 2003, is consistent with 47 U.S.C. 254(c).
2. Nextel Partners shall file quarterly reports with the Commission providing the status of universal service fund expenditures and projects. This Order is effective as of the date hereof.

Chairman Michael Callahan voted *Aye*, Vice-Chairman Bo Robinson voted *Aye*, and Commissioner Nielsen Cochran voted *Aye*.

¹ Federal-State Joint Board on Universal Service Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, FCC 99-306, Released November 2, 1999 ("Universal Service Order"). See generally, paragraphs 93-110.

SO ORDERED, this the 29th day of September, 2003



MISSISSIPPI PUBLIC SERVICE COMMISSION

BY Michael Callahan
MICHAEL CALLAHAN, CHAIRMAN

BY Bo Robinson
BO ROBINSON, VICE-CHAIRMAN

BY Nielsen Cochran
NIELSEN COCHRAN, COMMISSIONER

ATTEST: A TRUE COPY

Brian U. Ray
BRIAN U. RAY
EXECUTIVE SECRETARY

Mississippi Public Service Commission

WILLIE E. MAY, COUNSEL
OFFICE OF MOTOR CARRIAGES
OSCAR L. MORGAN, CLERK
OFFICE OF MOTOR CARRIAGES
DAVID L. CAMPBELL, ATTORNEY
COMMISSION STAFF

BRIAN U. RAY
EXECUTIVE SECRETARY
(601) 961-5400



MICHAEL CALLAHAN, CHAIRMAN
HATTIESBURG, SECOND DISTRICT
BO ROBINSON, VICE CHAIRMAN
HAMPTON, THIRD DISTRICT
NIELSEN COCHRAN, COMMISSIONER
JACKSON, FIRST DISTRICT

September 29, 2003

Irene Flannery
Universal Service Administrative Company
21220 L Street, NW - Suite 600
Washington, D.C. 20037

Re CC Docket No. 96-45, No. 99-306, October 1st Certification Deadline for Non-Rural Carriers

Dear Ms. Flannery:

Pursuant to 47 C.F.R. § 54.313, The Mississippi Public Service Commission ("MPSC") files its required certification for the year 2004 for NPCC, Inc. d/b/a/ Nextel Partners.

In accordance with the Federal Communications Commission's ("FCC") requirements in *Federal/State Joint Board on Universal Service, Ninth Report and Order, Eighteenth Order on Reconsideration, CC Docket No. 96-45, FCC 99-306*, the MPSC certifies that Nextel's proposed use of federal universal service high-cost support for the year 2004 will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the Telecommunications Act of 1996.

Attached is a copy of the Commission's order in its Docket No. 2003-VA-0256

Enclosed is a stamped addressed envelope and an additional copy of this letter for you to use in forwarding a stamped filed copy of this correspondence. Thank you for your assistance in this matter.

Sincerely,

M. Callahan

Michael Callahan, Chairman

Bo Robinson

Bo Robinson, Vice-Chairman

N. Nielsen

Nielsen, Commissioner

Enclosure

601 N. WEST STREET, SUITE 201-A, JACKSON, MISSISSIPPI 39201
P.O. BOX 1174 JACKSON, MISSISSIPPI 39215-1174
FAX (601) 961-4443

Mississippi Public Service Commission

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BO ROBINSON, VICE-CHAIRMAN
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OFFICE OF MOTOR CARRIERS

OSCAR L. MORGAN, MAJOR
OFFICE OF MOTOR CARRIERS

DAVID L. CAMPBELL, ATTORNEY
COMMISSION STAFF

September 29, 2003

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445-12th Street, SW, Room TW-A306
Washington, D.C. 20554

Re CC Docket No. 96-45, No. 99-306, October 1st Certification Deadline for Non-Rural Carriers

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 54.313, The Mississippi Public Service Commission ("MPSC") files its required certification for the year 2004 for NPCR, Inc. d/b/a Nextel Partners.

In accordance with the Federal Communications Commission's (FCC) requirements in *Federal/State Joint Board on Universal Service, Ninth Report and Order, Eighteenth Order on Reconsideration, CC Docket No. 96-45, FCC 99-306*, the MPSC certifies that Nextel's proposed use of federal universal service high-cost support for the year 2004 will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the Telecommunications Act of 1996.

Attached is a copy of the Commission's orders in its Docket No. 2003-UA-0256.

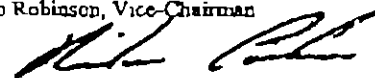
Enclosed is a stamped addressed envelope and an additional copy of this letter for you to use in forwarding a stamped filed copy of this correspondence. Thank you for your assistance in this matter.

In accordance with the FCC's mandate, this certification letter is also being sent to Irene Flannery, Universal Service Administrative Company.

Sincerely,


Michael Callahan, Chairman


Bo Robinson, Vice-Chairman


Nielsen Cochran, Commissioner

Enclosure
Cc Irene Flannery